

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RONNIE L. MOODY,) No. C 09-3748 JSW (PR)
Plaintiff,)
v.) **ORDER OF DISMISSAL**
OFFICER SALAZAR,)
Defendant.)

Plaintiff, a California prisoner, filed this pro se civil rights action under 42 U.S.C. § 1983, complaining about the use of excessive force while Plaintiff was incarcerated at the San Francisco County Jail. In the complaint, Plaintiff states that he has not exhausted all of his administrative remedies to the highest level available, alleging that there were no complaint forms available, so instead of filing the grievance, he wrote a description of what happened and sent it to several private attorneys and to the “Golden Gate Court in San Francisco not too long ago.” (Amended Complaint at 2.).

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

1 The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321
 2 (1996) (“PLRA”) provides: “No action shall be brought with respect to prison conditions
 3 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail,
 4 prison, or other correctional facility until such administrative remedies as are available
 5 are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is mandatory and not left to the
 6 discretion of the district court. *Woodford v. Ngo*, 126 S. Ct. 2378, 2382 (2006).
 7 Exhaustion is a prerequisite to all prisoner lawsuits concerning prison life, whether such
 8 actions involve general conditions or particular episodes, whether they allege excessive
 9 force or some other wrong, and even if they seek relief not available in grievance
 10 proceedings, such as money damages. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). The
 11 exhaustion requirement requires “proper exhaustion” of all available administrative
 12 remedies. *Woodford*, 126 S. Ct. at 2387.

13 Because exhaustion under § 1997e(a) is an affirmative defense, a complaint may
 14 be dismissed for failure to exhaust only if failure to exhaust is obvious from the face of
 15 the complaint and/or any attached exhibits. *See Wyatt v. Terhune*, 315 F.3d 1108,
 16 1119-20 (9th Cir. 2003). The court may dismiss a complaint for failure to exhaust where
 17 the prisoner “conce[des] to nonexhaustion” and “no exception to exhaustion applies.” *Id.*
 18 at 1120. Here, Plaintiff concedes in his amended complaint that he has not exhausted his
 19 administrative remedies (Amended Complaint at 2), and no exception to exhaustion is
 20 alleged or apparent in the complaint.

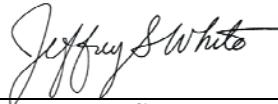
21 Section 1997e(a) requires that Plaintiff exhaust his claim before raising it in a §
 22 1983 complaint in federal court. An action must be dismissed unless the prisoner
 23 exhausted his available administrative remedies *before* he or she filed suit, even if the
 24 prisoner fully exhausts while the suit is pending. *McKinney v. Carey*, 311 F.3d 1198,
 25 1199 (9th Cir. 2002). As it is clear from the complaint that Plaintiff has not pursued all
 26 levels of administrative review available to him in exhausting his complaint and there is
 27
 28

1 no applicable exception to the exhaustion requirement, dismissal without prejudice is
2 appropriate.

3 Accordingly, the above-titled action is hereby DISMISSED, without prejudice to
4 Plaintiff's refiling his claim after all available administrative remedies have been
5 exhausted. The Clerk shall close the file and enter judgment in favor of Defendants.

6 IT IS SO ORDERED.

7 DATED: August 25, 2009


8 JEFFREY S. WHITE
9 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RONNIE LEE MOODY,

Case Number: CV09-03748 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

OFFICER SALAZAR et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 25, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ronnie Lee Moody T54036
San Quentin State Prison
I AC 645
San Quentin, CA 94964

Dated: August 25, 2009

Jennifer Ottolini
Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk